Supreme Court, U.S.
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No. _____

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1996

PATRICIA HURST HOLT,

*Petitioner,*

-v-

J. L. PRESCOTT CO.,

*Respondent.*

## ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether the use of the word "wife" creates a class designation in a contract for a definite term?

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Patricia Hurst Holt respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

## OPINIONS BELOW

The findings of fact and conclusions of law of the district court are unreported. (Appendix "1"). The opinion of the Court of Appeals is also unreported. (Appendix "2"). The order denying a timely petition for rehearing and rejecting a suggestion for rehearing en banc is also unreported. (Appendix "3").

## JURISDICTION

The basis for jurisdiction in this court arises as a result of the entry of judgment by the United States District Court for the Central District of California on October 11, 1994; and the Memorandum affirming the judgment, on different reasoning, filed by the United States Court of Appeals for the Ninth Circuit on June 26, 1996 and entered by the district court on August 30, 1996. The Court of Appeals denied a timely petition for rehearing and rejected a suggestion for rehearing en banc on August 13, 1996. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

## PERTINENT STATUTORY PROVISIONS

The California statutes involved in this case are:

*California Civil Code §1636*: "A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful."

*California Civil Code §1638*: "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity."

*California Civil Code §1639*: "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this title."

*California Civil Code §1646*: "A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made."

*California Civil Code §1654*: "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."

## STATEMENT OF THE CASE

In February of 1984, J. A. Keilly entered into a ten-year agreement with the J. L. Prescott Company. The contract included the following provision:

> "If you should die during the term of this agreement, we will continue to pay the above defined commission to your wife, Shirley G. Keilly, until December 31, 1988 and subsequent to that date she will receive

> from us if living, a flat 2% on total sales until December 31, 1993."

In January of 1987, Shirley Keilly predeceased J. A. Keilly. In February of 1988, on Valentine's Day, J. A. Keilly married Patricia Holt-Keilly. In 1992, J. A. Keilly passed away prior to the expiration of the term of the contract, leaving his "wife," Patricia Holt-Keilly, a widow.

Since the agreement contained the provision reflecting and using the word "wife," Patricia Holt-Keilly filed, based on diversity jurisdiction, a claim for relief. The district court reasoned that the contract was ambiguous because it concluded that in denoting "your wife, Shirley G. Keilly [,]" the contract identified both Keilly's wife and Shirley Keilly. Noting that J. A. Keilly created the provision, the trial court reasoned that the ambiguity should be resolved against the drafter and entered judgment for Prescott. The circuit court disagreed, not finding any ambiguity, and reasoned that the contract identified Shirley Keilly as the exclusive and sole beneficiary. The circuit court then focused upon extrinsic evidence to support the conclusion and affirmed the judgment, thereafter denying a rehearing and suggestion for rehearing en banc.

## REASONS FOR GRANTING THE PETITION

Scripture is replete with passages encouraging the protection of widows, orphans and sojourners. Providence protects human hearts precariously positioned on the abyss.

The courts are not in harmony. Patricia Holt-Keilly respectfully moves this Honorable Court to exercise supervisory powers to correct the district court's departure from reason as well as the circuit court's misapplication of logic and reason constituting a departure from the accepted and usual course of judicial proceedings.

While the district and appellate courts correctly noted that J. A. Keilly, at the inception of the contract, was married to Shirley G. Keilly through January of 1987, the date of her death, both courts skirt the fact that the word "wife" sets forth a specific legal relationship. The courts also fail to address the fact that the name of Shirley Keilly is set forth solely for the purpose of identification. The legal relationship, although paramount, is subordinated to identity. The fallacy of accent occurs because a shift in meaning persists under both judicial interpretations. The status of the legal relationship compels a finding with respect to the identity of the person, not the other way around.

J. A. Keilly's subsequent marriage to Patricia in 1988, during the term of the contract, provides fertile ground to illustrate the point. For example, if J. A. Keilly

had divorced and then predeceased Shirley during the term of the agreement, the meaning of the word, and the legal relationship of, "wife" would have been controlling. Shirley Keilly would have had to have maintained the status of the legal relationship to enjoy the benefit of the contract. The proposition is absolute, fathomable and irrefutable and demonstrates the fallacy of accent. The error is, despite the presence of the word "wife", caused by shifting focus from the legal relationship to identity, but not back.

Strict and liberal construction must recognize that the word "wife" establishes the status of the legal relationship as the qualifying condition. The district court identified the problem, but clearly erred. The appellate court also erred and created another problem entirely, by riding roughshod over, and essentially striking, the word "wife" from the contract.

The particular affirmative categorical proposition, created by the use of the word "wife", establishes both a quality (the status of the legal relationship) and a quantity (Shirley and Patricia). Pure reason compels a minimal interpretation that, during J. A. Keilly's life, the use of the word "wife" created a class, which included Patricia, during the term of the contract. Reasoning otherwise is invalid and unfathomable.

In the case of Hagan v. Scottish Union & National Insurance Company (1902) 186 U.S. 423, 22 S.Ct. 862, 46 L.Ed. 429, this court noticed the distinction between

capacity and identity. An insurance policy issued "for whom it may concern," and this court held that the contract may be enforced by a person who later fills the description. In Modern Woodmen of America v. Allin (1921) 133 N.E. 677, 301 Ill. 119, the state court addressed the similar issue in the context of the use of the word "wife" and concluded: "It was the person who at his death answered the description of the class designated that he desired to protect."

The most important aspect of this case is the eternal truth of the fact that J. A. Keilly intended, in the event of his death, to protect and to provide for his wife, the person standing in the legal relationship, during the term of the contract. Don Prescott, the President of the J. L. Prescott Company, with respect to this fact, appreciated and enjoyed both knowledge and understanding. Mr. Keilly and Mr. Prescott mutually recognized that a period of mourning is comforted by a measure of providence, and the gentlemen manifested jointly the intent to care for another.

## CONCLUSION

The California statutes provide guidance, but logic produces the result. Focusing on status eliminates the error and produces a just result.

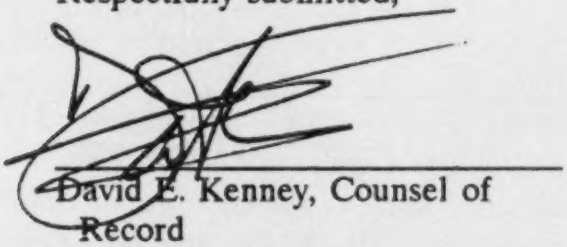
The reason the Petition for Certiorari must be granted is because the rules of reason support the

proposition that the use of the word "wife," under the circumstances and facts of this case, applies legally with equal dignity and force to J. A. Keilly's "wife", Patricia Holt-Keilly.

Mr. Keilly and Mr. Prescott intended to be beneficent, compassionate and kind. Such acts have a certain beauty and must resonate forever.

Dated: October 22 1996.

Respectfully submitted,



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